

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Applicants would like to thank the Examiner for maintaining the indication that claims 9, 11, 14 and 16 are allowable.

However, the Examiner has withdrawn the rejections based on the Avni reference in favor of rejections based on U.S. Patent Application Publication No 2003/0028078 to Glukhovsky (hereinafter "Glukhovsky"). Specifically, the Examiner rejects claims 1-5, 17-23 and 26-28 under 35 U.S.C. § 102(a) as being anticipated by Glukhovsky. Furthermore, the Examiner rejects claims 6-8, 10, 12, 13, 15, 24 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Glukhovsky in view of Avni.

In response, Applicants respectfully traverse the Examiner's rejections under 35 U.S.C. §§ 102(a) and 103(a) for at least the reasons set forth below. However, independent claims 1, 7, 12 and 17-19 have been amended to clarify their distinguishing features. Accordingly, claims 2, 21 and 22 have been canceled and claim 3 has been amended to change its dependency from canceled claim 2 to claim 1.

The Examiner now argues that Glukhovsky discloses all of the features of independent claims 1, 17-19, 21 and 22 (primarily citing Figure 3 of Glukhovsky). Applicants respectfully disagree but nonetheless have amended independent claims 1, 7, 12 and 17-19 as discussed below to clarify the same and in the interest of advancing prosecution.

Figure 3 of Glukhovsky shows an image acquisition cycle (41), which is made up of three imaging periods (42, 43 and 44). Imaging period (42) is made up of period (42A) in which a red illumination is on and period (42B) where a first image is acquired under the red illumination. Periods (43) and (44) are similar except they use green and blue

illumination, respectively, resulting in second and third images acquired under the green and blue illumination, respectively. The three images are processed to produce the final color image for display (paragraph 0069, lines 1-8).

Although, Applicants submit that Glukhovsky does not disclose or suggest the features of independent claims 1, 7, 12 and 17-19, the same have been amended to recite:

“a switching device which switches illuminating conditions of the illuminating light irradiated by the illuminating device, presets at least two different illuminating conditions and a switching order thereof in a state where the illuminating light has the same wavelength band, the at least two different illuminating conditions being a light-emitting amount or light-emitting time, and automatically switches the illuminating conditions from a first illuminating condition corresponding to a first image acquisition cycle to a second illuminating condition corresponding to a subsequent image acquisition cycle;

an image pick-up device for sequentially picking up, in a state where the illuminating light has the same wavelength band, images of a subject, which is irradiated with illuminating light under the illuminating conditions which are different according to the switching by the switching device;

a setting device which sets the light-emitting amount or light-emitting time.”

The amendment to claims 1, 7, 12 and 17-19 is fully supported in the original disclosure, including at original claim 2. Thus, no new matter has been introduced into the disclosure by way of the present amendment to independent claims 1, 7, 12 and 17-19.

The Examiner argues in the Office Action that Figure 3 also shows the features of claim 2. Applicants respectfully disagree. In Figure 3, the only condition that varies between imaging periods (42, 43, 44) is the type of illumination. Figure 3 and the accompanying text of Glukhovsky (paragraphs 0057-0072) does not disclose or suggest varying the light emitting amount or time.

The capsule endoscope apparatus recited in claims 1, 7, 12 and 17-19 can preset illuminating conditions and a switching order thereof in a state where the illuminating

light has the same wavelength band, specifically, under a state of illumination of white light that corresponds to the wavelength range of visible light, and then switches the illuminating conditions in the state where the illuminating light has the same wavelength band, according to the set switching order.

In contrast, as discussed above, Glukhovsky corresponds to the case of illuminating conditions or light-emitting time of different wavelength bands. Moreover, Glukhovsky uses illuminating light having three wavelength bands to cover a white light wavelength band.

Illumination by the illuminating light having the three wavelength bands is usually performed according to a white balance condition. Accordingly, if one or two of the three illumination conditions are changed to perform illumination, the image picked up and obtained is changed in color balance. Therefore, illumination with such change is not usually performed.

With the features of the capsule endoscope apparatus recited in claims 1, 7, 12 and 17-19, it is made possible to pick up an image under an adequate illuminating condition that can avoid whiteout, etc., and to obtain an image having a wide dynamic range.

In contrast, Glukhovsky does not have such function. Thus, in Glukhovsky changing the illuminating condition or light-emitting time results in change of color.

Furthermore, in Glukhovsky, in order to avoid whiteout, etc., it is necessary to change the three time periods by the same ratio. To achieve this, it is necessary to store these time periods and to control to change each of the periods by the same ratio.

With regard to the rejection of claims 1-5, 17-23 and 26-28 under 35 U.S.C. § 102(b), a stent having the features discussed above and as recited in independent claims 1 and

17-19, is nowhere disclosed in Glukhovsky. Since it has been decided that “anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim,”¹ independent claims 1 and 17-19 are not anticipated by Glukhovsky. Accordingly, independent claims 1 and 17-19 patentably distinguish over Glukhovsky and are allowable. Claims 3-5, 23 and 26-28 being dependent upon claims 1 and 17-19 are thus at least allowable therewith (claims 2, 21 and 22 being canceled). Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 1-5, 17-23 and 26-28 under 35 U.S.C. § 102(a).


With regard to the rejection of claim 6 under 35 U.S.C. § 103(a), since independent claim 1 patentably distinguishes over the prior art and is allowable, claim 6 is at least allowable therewith because it depends from an allowable base claim. Consequently, the Examiner is respectfully requested to withdraw the rejection of claim 6 under 35 U.S.C. § 103(a).

With regard to the rejection of claims 7, 8, 10, 12, 13, 15, 24 and 25 under 35 U.S.C. § 103(a), Independent claims 7 and 12 are not rendered obvious by the cited references because neither the Glukhovsky patent nor the Avni patent, whether taken alone or in combination, teach or suggest a capsule endoscope apparatus having the features discussed above and recited in independent claims 7 and 12. Accordingly, claims 7 and 12 patentably distinguish over the prior art and are allowable. Claims 8, 10, 13, 15, 24 and 25 being dependent upon claims 7 and 12, are thus at least allowable therewith. Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 7, 8, 10, 12, 13, 15, 24 and 25 under 35 U.S.C. § 103(a).

¹ Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



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